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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,321

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Achim Helmenstein

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7590

09/17/2010

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EXAMINER

HEITBRINK, JILL LYNNE

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

09/17/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/565,321	Applicant(s) HELMENSTEIN, ACHIM	
	Examiner JILL L. HEITBRINK	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/20/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-12 in the reply filed on July 29, 2010 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification is unclear as to what type of sheet would have been plastically deformable material that counteracts the restoring property of a soft plastic material (which is believed to be the injected material). Additionally, it is unclear as to when the restoring would occur i.e. during the molding, ejection or during the use of the tube product.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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6. Claim 10 recites the limitation "the soft plastic material" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 4-6, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dambricourt WO 01/68347 (US 7,192,548 is English equivalent).

9. Dambricourt (col. 10, line 37-col. 11, line 42) discloses injection molding an integral unfinished tube including a tube body J, a tube shoulder C and a tube outlet D using a female die 2, a core 3 and a neck mold 11, 12. The unfinished tube is demolded by withdrawing the core while retaining the unfinished tube in the neck mold 11, 12 (col. 10, lines 61-65), and withdrawing the female die (col. 10, lines 49-52). The unfinished tube is released from the neck mold (col. 11, lines 4-7). The flexible tubes formed in Dambricourt (col. 1, lines 42-45) are known to be used for packaging cosmetic products. It would have been obvious to a person of ordinary skill in the art to flatten and close the open end of the flexible tube body of Dambricourt so as to package cosmetic products. Dambricourt (col. 11, lines 1-3) discloses air supplied through the core. Dambricourt discloses a demolding bevel (col. 4, lines 21-25 and col. 10, lines 27-33) and the core or die having a slide coating (col. 6, lines 62-67). The core being supported at the neck mold during at least part of the injection phase is shown in Fig. 10 of Dambricourt.

10. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dambricourt WO 01/68347 (US 7,192,548 is English equivalent) taken together with Jacobs US 6,547,094.

11. Dambricourt (col. 10, line 37-col. 11, line 42) discloses injection molding an integral unfinished tube including a tube body J, a tube shoulder C and a tube outlet D using a female die 2, a core 3 and a neck mold 11,12. The unfinished tube is demolded by withdrawing the core while retaining the unfinished tube in the neck mold 11, 12 (col. 10, lines 61-65), and withdrawing the female die (col. 10, lines 49-52). The unfinished tube is released from the neck mold (col. 11, lines 4-7). The flexible tubes formed in Dambricourt (col. 1, lines 42-45) are known to be used for packaging cosmetic products. Jacobs (col. 1, lines 21-23 and col. 2, lines 1-3) teaches the well known step of flattening and closing the open end of the tube body. It would have been obvious to a person of ordinary skill in the art to flatten and close the open end of the flexible tube body of Dambricourt so as to package cosmetic products.

12. Dambricourt (col. 11, lines 1-3) discloses air supplied through the core. Dambricourt discloses a demolding bevel (col. 4, lines 21-25 and col. 10, lines 27-33) and the core or die having a slide coating (col. 6, lines 62-67). The core being supported at the neck mold during at least part of the injection phase is shown in Fig. 10 of Dambricourt.

13. Jacobs teaches a sheet or sleeve placed in the cavity which would have been between the core and female die which form the cavity. It would have been obvious to

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a person of ordinary skill in the art of forming tubes to place a sheet or sleeve in the cavity of Dambricourt since the additional material would produce known desired properties such as decoration and permeability. The sheet being plastically deformable that counteracts the restoring property of the plastic material may be inherent in the sheet material since deformable tubes such as those used for makeup and cake frosting are available which the tube shape is restored after expelling the makeup or frosting out of the tube by deforming the tube by hand.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JILL L. HEITBRINK whose telephone number is (571)272-1199. The examiner can normally be reached on Monday-Friday 9 am -2 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jill L. Heitbrink/
Primary Examiner, Art Unit 1791

Jill L. Heitbrink
Primary Examiner
Art Unit 1791

jlh